No. 31719

In the Supreme Court of the United States.

OCTOBER TERM, 1926

No. 304

FOSTER CLINE, as District Attorney for the City and County of Denver, State of Colorado,

Appellant,

vs.

FRINK DAIRY COMPANY, THE WINDSOR FARM DAIRY COMPANY THE CLIMAX DAIRY COMPANY,

Appellees.

Appeal from the District Court of the United States for the District of Colorado.

BRIEF OF APPELLANT

INTRODUCTION.

The decision from which this appeal is taken is reported as *Frink Dairy et al. vs. Cline, District Attorney for City and County of Denver, Colo.*, (District Court, D. Colorado, November 14, 1925), 9 Fed. (2d) 176. It is there jointly reported with *Beatrice Creamery Co. vs. Cline, etc.*, a companion case involving the same questions but from which no appeal is now taken.

Final judgment of the District Court of the United States for the District of Colorado, in the form of a permanent injunction against appellant from further prosecuting a pending case against appellees in the District Court of the City and County of Denver, State of Colorado, or from instituting any further similar prosecutions, was entered December 14, 1925 (R. 33), and, in effect, makes permanent the interlocutory injunction of November 14, 1925 (R. 32), by reason of appellant electing (R. 33) to stand upon his motion to dismiss which was filed November 2, 1925 (R. 12).

Appellant contends that in entering these two injunctions, the Court below erred, first, in enjoining a pending prosecution in the state court and erred, second, in declaring unconstitutional an act of the Colorado General Assembly approved April 17, 1913, Session Laws 1913, p. 613, commonly known as the Colorado Anti-Trust Act, which is found quoted at R. 4, 5 and 6. The rulings of the court below on these two points are at pages 32, 33, 45 and 48 of the record.

This appeal is brought directly to the Supreme Court of the United States under Section 266 of the Judicial Code, which gives this court jurisdiction.

(See Pullman Company vs. Croon, 231 U. S. 571.)

STATEMENT OF THE CASE.

The case may be concisely stated as follows:

On the twenty-ninth day of October, 1925, the appellees, The Frink Dairy Company, a corporation, the Windsor Farm Dairy Company, a corporation, The Climax Dairy Company, a corporation, H. Brown Cannon, Clarence Frink, A. T. McClintock and Morris Robinson, as plaintiffs, filed in the United States District Court for the District of Colorado their bill of complaint in equity against appellant Foster

Cline, as District Attorney for the City and County of Denver, State of Colorado, as defendant. The allegations of the bill of complaint (referring to the parties as they were designated below) are substantially as follows:

That the plaintiff companies are duly incorporated in Colorado and that the individual plaintiffs are residents of Colorado (R. 1); that the defendant is the District Attorney of the City and County of Denver, Colorado (R. 1); that the amount in controversy is sufficient to confer jurisdiction (R. 2); that the suit involves the constitutionality of the Colorado anti-trust Act (R. 2); that the plaintiff companies are engaged in the milk business in Denver and Colorado under a large investment (R. 2); that the individual plaintiffs are officers and stockholders of the various companies (R. 3); that the relief sought is necessary to protect the investments and property of the plaintiffs (R. 3); that Chapter 161 of the Session Laws of the State of Colorado for 1913 provides as follows: (here the statute is quoted) (R. 3, 4, 5, 6); that the said act is void because (1) it violates Article XIV of the amendments to the Constitution of the United States, because it is uncertain and delegates legislative powers and inflicts cruel and unusual penalties (R. 7); (2 and 3) it violates this same amendment by denying equal protection of the laws (R. 7); (4) it violates Section 16 of Article II of the Colorado Constitution in failing to fix a standard of criminality (R. 8); (5) it violates Section 25 of Article II, the due process provision of the Constitution of the State of Colorado (R. 8), and that (6) it violates Article III of the Constitution of the State of Colorado by delegating legislative powers to the judicial branch of the State government (R. 8); that the plaintiffs have had certain meetings to discuss their business, but have not discussed anything with the producers of milk (R. 9); that the defendant in his capacity

of District Attorney has contended that the plaintiffs are violating the said Colorado Anti-Trust Act and is engaged in prosecuting a case, Number 28320, in Division VI of the District Court of the City and County of Denver, wherein all of the plaintiffs are defendants charged criminally with the violation of the said act, which said case is set for November 9, 1925, for trial and that defendant has announced that he will try the said criminal case; that the defendant and a grand jury are continuing to investigate the businesses of the plaintiffs to their great injury (R. 10); that the existence of the said Anti-Trust Act is a constant menace to the businesses of the plaintiffs (R. 10, 11); that the plaintiffs are entitled to equitable relief (R. 11).

The bill of complaint then prays: (1) that the defendant be required to answer (R. 11); (2) that the defendant be enjoined from enforcing the Anti-Trust Act against the plaintiffs and from taking any further steps in the prosecution of the case numbered 28320 in Division VI of the District Court of the City and County of Denver against the plaintiffs (R. 12); (3) that the Anti-Trust Act be declared unconstitutional and void (R. 12).

On November 2, 1925, the defendant (appellant) filed his motion to dismiss in the usual form for want of equity (R. 12, 13).

Two amendments to the bill of complaint were made, the first, on November 4, 1925, alleging that the charge pending against the plaintiffs is in five counts for conspiracy to violate the Anti-Trust Act and that the Colorado Court has held the said act to be constitutional (R. 13, 14), and the second amendment, also on November 4, 1925, alleging that the act was rendered unconstitutional by the subsequent passage of the co-operative marketing act exempting farmers from the

operation thereof, and adding a prayer that the defendant (appellant) be enjoined from attempting to forfeit the charters of the plaintiff companies.

On the fourth of November 1925, there were filed in the court below the affidavits of Clarence Frink (R. 15-19), Simon J. Heller (R. 20-22), A. T. McClintock (R. 22-25), H. Brown Cannon (R. 25-28), and Morris Robinson, setting forth matters of an evidentiary nature tending to sustain the allegations of the petition.

On the fourteenth day of November, 1925, the court entered an order for an interlocutory injunction (R. 32), declaring the Colorado Anti-Trust Act to be unconstitutional and enjoining the defendant from enforcing the said act against the plaintiffs and enjoining him "from taking any further action in the prosecution or trial of that certain criminal processing pending in the District Court, City and County of Denver, State of Colorado, being No. 28320, Div. VI of said Court, styled The People of the State of Colorado vs. H. Brown Cannon *et al.*, and being entitled "Information for conspiracy to violate Anti-Trust Laws."

On December 14, 1925, this decree was made permanent (R. 33).

The opinion of the court below is found on pages 37 to 50 of the Record.

From these two orders of the court below, the defendant, now the appellant, has taken this appeal (R. 34-37 and 50-53).

SPECIFICATION OF POINTS RELIED ON.

There are nine assignments of error (R. 35, 36) and six points designated as those upon which appellant intends to

rely (R. 50-51). Actually, the contentions of the appellant may be summarized into two contentions:

I. That the court below should not have interfered by injunction with the prosecution of a criminal case in the State Court of Colorado, which criminal case was pending at the time of the filing of the bill of complaint herein.

II. That the Colorado Anti-Trust Act is in fact constitutional.

The argument of this brief on these two points may be summarized as follows:

I. That the federal courts do not enjoin the further prosecution of pending criminal cases in state courts, because:

1. The statute prohibits it, and
2. It is contrary to the rules of equity, for
   a. Even in civil cases there is no such intervention.
   b. And in criminal cases there are additional reasons for the rule.

II. The Colorado Anti-Trust Law is constitutional.

1. The Colorado Anti-Trust Law does not deny the equal protection of the laws by exempting labor and agricultural products.
   a. Exemption of Labor.
   b. Exemption of Agricultural products.
   c. The case of Connolly v. Union Sewer Pipe Co.
   d. Public policy requires the exemption of co-operative marketing associations from anti-trust laws.

2. The provision of the Colorado Anti-Trust Law providing for the forfeiture of the charters, rights and franchises of a corporation violating it is not invalid under the due process clause of the Fourteenth Amendment.

3. The Colorado Anti-Trust Law does not violate the Fourteenth Amendment on the ground that it fails to establish an ascertainable standard of guilt.

   a. Cases distinguished.

BRIEF OF THE ARGUMENT

I.

THE INJUNCTION

Federal Courts do not enjoin the further prosecution of pending criminal cases in State courts, because

1. The Statute prohibits it.

   Section 720 of the Revised Statutes, U. S. Comp. Stat. 1901, p. 581 (Sec. 265, Judicial Code, 36 St. At. L. 11627, Chap. 231, U. S. Comp. Stat. Supp. 1911, p. 236) is as follows:

   "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunctions may be authorized by any law relating to proceedings in bankruptcy."

2. It is contrary to the rules of equity for,

   a. Even in civil cases there is no such intervention.

   Essanay Film Manufacturing Co. vs. Kane, 258 U. S. 358

Hull vs. Burr, 234 U. S. 712

Mutual Reserve Fund Life Assn. v. Phelps, 190 U. S. 147

United States v. Parkhurst-Davis Merc. Co., 176 U. S. 317

Parcher v. Cuddy, 110 U. S. 742

Dial v. Reynolds, 96 U. S. 340

Haines v. Carpenter, 91 U. S. 254

Diggs v. Wolcott, 4 Cranch 179.

The rule announced in these cases applies only where the action in the state court is pending at the time of the institution of the suit in the federal court asking for an injunction. In the instant case, the proceeding in the Colorado court was pending and set for trial at the time the suit was instituted in the court below.

b. In criminal cases the rule is even more strict. This is for the reason that equity has always hesitated to interfere with criminal cases.

Story, Commentaries on Equity Jurisprudence, section 893.

Ex Parte Sawyer, 124 U. S. 200.

The rule that a federal court of equity will not interfere by injunction with criminal cases already pending in State Courts is well grounded in both reason and authority. Ex Parte Sawyer, *supra*; Harkrader vs. Wadley, 172 U. S. 148; Fitts v. McGee, 172 U. S. 516; Ex Parte Young, 209 U. S. 123, especially at p. 162.

The majority opinion of the court below (R. 47) relied, in granting the injunction against a pending criminal prosecution in a state court, on certain language of this court in Davis & Farnum Mfg. Co. v. Los Angeles, 189 U. S. 207, which is admittedly *obiter dicta* running contrary to the de-

cisions of this court cited above, as pointed out in the dissenting opinion of Symes, J. (R. 49) and also contrary to the later statements of this court in Ex Parte Young, *supra*.

Of course, it is not denied that the federal courts, in proper cases, in order to preserve the constitutional guarantees, may interfere by injunction with the threatened institution of criminal prosecutions, but even in such cases, it is with great hesitancy and only under extraordinary circumstances, that this jurisdiction is exercised.

Hygrade Provision Co. v. Sherman, 266 U. S. 497
Fenner v. Boykin, 70 L. Ed. 599, ...U. S. ....

II.

THE COLORADO ANTI TRUST LAW.

The Colorado Anti-Trust Law is found in Colorado Session Laws for 1913, Chapter 161, page 613 and in Sections 4036 to 4043 inclusive Compiled Laws of Colorado, 1921. The Act is printed in full in Appendix "A" of this brief.

This Act provides that a trust is a combination of capital, skill or acts by two or more persons for any or all of the following purposes:

First, to create or carry out restrictions in trade or commerce.

Second, to increase or reduce the price of merchandise, produce or commodities.

Third, to prevent competition in the manufacture, transportation, sale or purchase of merchandise and commodities.

Fourth, to fix any standard of figures whereby the price of any article or commodity is controlled or established.

Fifth, to enter into any contract by which they shall

agree not to sell, manufacture or transport any article or commodity below a common standard figure; or by which they shall agree in any manner to keep the price of such commodity at a fixed figure; or by which they shall settle the price of any article so as to preclude competition; or by which they shall agree to unite any interest they may have so that the price of a commodity may be effected.

It is provided that any domestic corporation violating this Act shall have its charter revoked. A foreign corporation violating the Act is denied the right to do business in the State. Contracts in violation of the Act are void.

This Act has been before the Supreme Court of Colorado for interpretation four different times, the cases being:

Burns v. Wray Co., 65 Colo. 425
Campbell v. People, 72 Colo. 213
Johnson v. People, 72 Colo. 218
Apostolos v. People, 73 Colo. 71.

In none of these cases did the Colorado Supreme Court directly consider the constitutionality of this Act. But, as said by Circuit Judge Lewis, in giving the opinion of the court below (R. 41):

> "We take these rulings of the Supreme Court (of Colorado) as an implied conclusion on its part that the Act was valid as the law of the State then stood."

The lower court held the Colorado Anti-Trust Law unconstitutional solely upon the ground that an exception from the operation of such law provided for in the Colorado Co-Operative Marketing Act of 1923 was a denial of the equal protection of the laws in violation of the Fourteenth Amendment and cited as authority for such ruling the case of Connally v. The Union Sewer Pipe Co., 184 U. S. 540.

1. THE COLORADO ANTI-TRUST LAW DOES NOT VIOLATE THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT BY EXEMPTING LABOR AND AGRICULTURAL PRODUCTS.

a. EXEMPTION IN FAVOR OF LABOR.

The Colorado Anti-Trust Law provides, Section 1, that:

> "Labor, whether skilled or unskilled, is not a commodity within the meaning of this Act."

It is settled by the decisions of this court that an anti-trust statute is not unconstitutional as denying the equal protection of the laws because it exempts labor.

> International Harvester Co. v. Missouri, 234 U. S. 199 at 210.
> Duplex Co. v. Deering, 254 U. S. 443 at 469.

b. EXEMPTION OF AGRICULTURAL PRODUCTS.

The pertinent provisions of the Colorado Co-operative Marketing Law, Chapter 141, Session Laws, 1923, are printed in Appendix "B" of this brief. The Act states that its purpose is to promote, foster and encourage the intelligent and orderly marketing of agricultural products and to eliminate speculation and waste in the distribution of agricultural products and to stabilize the price of agricultural products, all by means of co-operative marketing associations. It provides the method in which these associations shall be organized and carefully limits the membership and power of such associations.

Section 22 of the Act provides in part:

> "Any provisions of law which are in conflict with

this Act shall be construed as not applying to the associations herein provided for."

Section 29 of the Act provides as follows:

"No association organized hereunder and complying with the terms hereof shall be termed to be a conspiracy or a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this Act be considered illegal as such or in unlawful restraint of trade or as a part of a conspiracy or combination to accomplish an improper or illegal purpose."

The constitutionality of this Act has been upheld by the Supreme Court of Colorado in the case of Rifle Potato Growers' Association v. Smith, 78 Colo. 171.

The contention of the plaintiffs is that the exemption in favor of agricultural products created by the Marketing Act denies them the equal protection of the laws in violation of the Fourteenth Amendment of the Federal Constitution.

It is a well-established rule that classifications made by State legislatures having a reasonable basis and not palpably arbitrary are to be upheld.

Gulf, Colo. & Santa Fe R. R. Co. v. Ellis, 165 U. S. 150.

Magoun v. Ill. Trust & Savings Bank, 170 U. S. 283.

American Sugar Refining Co. v. Louisiana, 179 U. S. 89.

Missouri, Kansas & Texas R. R. Co. v. May 194 U. S. 267.

International Harvester Co. v. Missouri, 234 U. S. 199.

The exemption in favor of agricultural products created by the Colorado Marketing Act is reasonable and does not violate the Fourteenth Amendment. This exemption is not absolute but applies only to Cooperative Marketing Associations organized under and complying with the terms of the Colorado Cooperative Marketing Act. A perusal of the Marketing Act dissipates any thought that it has for its fundamental purpose the accomplishment or promotion of a monopoly. Its dominant purpose is to promote the welfare of its members by stimulating cooperative effort.

The Supreme Court of Colorado has held that this Act does not unreasonably restrain trade. In Rifle Potato Growers v. Smith, *supra*, it was said, page 177:

> "This act and contract cannot be classed as in undue or unreasonable restraint of trade, and it has been uniformly so held in the various states where these contracts have been considered."

In the same case it was also held that the Marketing Act did not discriminate unreasonably, the Colorado Supreme Court holding, page 176:

> "We think that, unless the classification clearly appears to be unreasonable, we must yield to the judgment of the legislature upon that point, and we think it not clearly unreasonable to say that there are reasons for maintaining stability of the markets of agricultural products beyond like reasons in case of other products, and that we must, therefore, acquiesce in this classification. The legislature in such classifications must have a wide range of discretion."

Section 29 of the Marketing Act should be construed

as not forbidding marketing associations from lawfully carrying out their legitimate objects, or, in other words, that such organizations should not be held *per se* to be illegal combinations or conspiracies in restraint of trade; but that section should not be construed as exempting such an organization or its members from accountability where there is a departure from the normal and legitimate objects of the association and where there is in fact an actual combination or a conspiracy in restraint of trade. Such is the interpretation which has been placed upon Section 6 of the Clayton Act, 38 Stat. 730, by the Supreme Court of the United States in the case of Duplex Co. v. Deering 254 U. S. 443 at 469:

Section 6 of the Clayton Act provides as follows:

> "That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

In construing this section, this court stated in Duplex Co. v. Deering, *Supra*, page 469:

> "As to Section 6, it seems to us its principal importance in this discussion is for what it does not authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in

the anti-trust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from lawfully carrying out their legitimate objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws."

Section 29 was inserted in the Colorado Marketing Act merely to clarify a disputed point of law, namely, whether the mere existence and operation of Cooperative Marketing Associations was a violation of the anti-trust laws, and to allow the effective functioning of Cooperative Marketing Associations and labor organizations on one side and anti-trust laws on the other without conflict.

c. THE CASE OF CONNOLLY V. THE UNION SEWER PIPE CO. 184 U. S. 540.

The lower court held the Colorado Anti-Trust law unconstitutional because of the exemption in favor of agricultural products, on the authority of the case of Connolly v. The Union Sewer Pipe Co. 184 U. S. 540. That decision is not controlling here. The Connolly case held unconstitutional an anti-trust statute of Illinois which contained the following exemption:

"The provisions of this Act shall not apply to agricultural products or livestock while in the hands of the producer or raiser."

That exemption is absolute while the exemption in favor of agricultural products created by the Colorado Marketing Act is not absolute and cannot be used as a protection for associations which do not comply with the terms of the Marketing Act but seek to restrain trade.

Furthermore, the Connolly case, while it has never been reversed by the Supreme Court of the United States, has been modified by later decisions of this court. See

New York Central R. R. Co. v. White, 243 U. S. 188
Miller v. Wilson, 236 U. S. 373
International Harvester Co. v. Missouri, 234 U. S. 199.

The distinction between the Connolly case and cases involving an exemption in favor of agricultural products created by a Marketing Act has been recognized in at least six cases in which State Supreme Courts have upheld exemptions of the character contained in the Marketing Act as against the Connolly decision which was advanced by those attacking the constitutionality of such laws. These cases are:

Northern Wisconsin Cooperative Tobacco Pool v. Bekkedal, 182 Wis. 571.
Potter v. Dark Tobacco Growers' Cooperative Assn., 201 Ky. 441.
List v. Burley Tobacco Growers Cooperative Assn., 114 Ohio State 361.
Dark Tobacco Growers Cooperative Assn. v. Dunn 150 Tenn. 614.
Kansas Wheat Growers Assn. v. Charlet, 118 Kans. 765.

Minnesota Wheat Growers Cooperative Marketing Assn., v. Huggins 162 Minn., 471.

d. PUBLIC POLICY REQUIRES THE EXEMPTION OF COOPERATIVE MARKETING ASSOCIATIONS FROM ANTI-TRUST LAWS.

Public policy requires an exemption of Cooperative Associations from anti-trust laws in favor of agricultural products. The earlier anti-trust legislation is being modified and certain well defined exemptions are being created. Since 1912 the United States Department of Agriculture has been encouraging and aiding in the formation of Cooperative Marketing Associations. Secretary of Agriculture Jardine in a recent address declared that cooperative marketing

> "is essential to the development of an independent prosperous agriculture and a prosperous agriculture is essential to the welfare of the nation."

Section 6 of the Clayton Act hereinbefore referred to is a clear indication of the policy of Congress in regard to Cooperative Marketing Associations, and the Capper-Volstead Act of February 18, 1922 and the act of July 2, 1926 creating a division of cooperative marketing in the Department of Agriculture further indicate the congressional trend. Cooperative marketing acts have been passed by more than three-fourths of the states of the union and these enactments have been upheld by the courts of last resort in at least fifteen of the states of the union. So far as we can discover in not a single case have any of these state laws been declared invalid. A partial list of the cases which have been decided is as follows:

Rifle Potato Growers v. Smith, 78 Colo. 171.
Northern Wisconsin Cooperative Tobacco Pool v. Bekkedal, 182 Wis. 571.

Potter v. Dark Tobacco Growers' Cooperative Assn., 201 Ky. 441.

List v. Burley Tobacco Growers Cooperative Assn., 114 Ohio State 361.

Dark Tobacco Growers Cooperative Assn. v. Dunn, 150 Tenn. 614.

Kansas Wheat Growers Assn. v. Charlet, 118 Kans. 765.

Minnesota Wheat Growers Cooperative Marketing Assn. v. Huggins 162 Minn. 471.

Tobacco Growers Cooperative Assn. v. Jones, 185 N. C. 265.

Brown v. Stable Cotton Cooperative Assn., 132 Miss. 859.

Texas Farm Bureau Cotton Assn. v. Stovall, 113 Texas 273.

Oregon Growers Cooperative Assn. v. Lentz, 107 Ore. 561.

Washington Cranberry Growers Assn. v. Moore, 117 Wash. 430.

Anaheim Citrus Fruit Assn. v. Yoeman, 51 Cal. App. 759.

Ex Parte Baldwin County Producers Corp., 203 Ala. 345.

Castorland Milk and Cheese Co. v. Shantz, 179 N. Y. S. 131.

Tobacco Growers Cooperative Assn. v. Patterson, 187 N. C. 252.

Poultry Producers of Southern Cal. Inc. v. Barlow, 189 Cal. 278.

Nebr. Wheat Growers Assn. v. Norquest, 204 N. W. 798 (Neb.)

California Bean Growers Assn. v. Rindge Co. 248 Pac. 658 (Calif.)

The public policy thus declared by legislation and thus universally upheld by judicial pronouncement must be held to be sound and not in contravention of any constitutional limitations.

2. THE PROVISIONS OF THE COLORADO ANTI-TRUST LAW PROVIDING FOR THE FORFEITURE OF THE CHARTERS, RIGHTS AND FRANCHISES OF A CORPORATION VIOLATING IT DO NOT INVALIDATE IT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The argument of the plaintiffs below on this point is predicated on the assumption that under Sections 3 and 4 of the Colorado Anti-trust law the various corporations which are parties to this suit are liable to have their charters revoked. It is to be noted that no action has been taken which attempts to revoke the charter of any of these companies. The point raised thus concerns facts which may never arise and is not properly before the court.

It is to be remembered that a corporation is a creature of the law with no inherent powers. The powers of a corporation and the means of executing those powers are absolutely within the State's control, and if a corporation violates a rule of conduct laid down by the State it is answerable to the State for such actions.

It is well settled that a State has the power to impose such conditions as it pleases upon corporations seeking to do business within it, and a provision in an anti-trust law providing for the forfeiture of a corporation's charter because of a violation of the anti-trust law is not a violation of the Fourteenth Amendment.

> Waters Pierce Oil Co. v. Texas, 177 U. S. 28 at 43;
> Waters Pierce Oil Co. v. Texas 212 U. S. 86 at 111.

3. THE COLORADO ANTI TRUST LAW DOES NOT VIOLATE THE FOURTEENTH AMENDMENT ON THE GROUND THAT IT FAILS TO ESTABLISH AN ASCERTAINABLE STANDARD OF GUILT.

The argument that this law is unconstitutional because of a failure to definitely fix a standard of guilt is based upon the first proviso found in the last paragraph of Section 1 of the law, which is

> "Provided that no agreement or association shall be deemed to be unlawful or within the provisions of this act, the object and purposes of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be marketed."

It is to be noted that the Colorado Anti Trust law defines and prohibits combinations which operate in restraint of trade and which in no way concern the subject of prices of commodities or the profits to be realized on the sale thereof. The Act was so construed by the Colorado Supreme Court in Campbell v. People, 72 Colo. 213. In that case the conviction was on a charge that the unlawful agreement between the defendants who constituted an association of master plumbers was that none but members in good standing of a named local union could be employed by the defendants. The court said:

> "We do not agree that the sole purpose of the act was to prevent a restriction in dealing in commodities but think that it was also to prevent the restriction of competition and the attainment of the control of a business, i. e. monopoly."

Many well-known methods can be resorted to by those in a combination to restrict or destroy competition and af-

fect prices and profits by indirection, such as the division of territory between them and other well-known methods; and it is to be noted that the information in this case charges a violation of the anti-trust law under each of the five definitions of a trust contained in the Colorado Anti-Trust Act.

A state statute is not unconstitutional because wanting in certainty when the provisions complained of as uncertain employ words or phrases having a well settled common law meaning notwithstanding an element of degree in the definition as to which estimates might differ.

Connally v. General Construction Company.....U. S.....70, Lawyers' Ed. 163-165.
Hygrade Prov. Co. v. Sherman, 266 U. S. 497.
Nash v. United States, 229 U. S. 373.

The proviso here complained of is, we contend, merely a legislative declaration of the rule of reason laid down by Chief Justice White in the Standard Oil Company case for the interpretation and application of the Sherman Anti-Trust Law. It is plain that combinations which do not come within this proviso would not be against public policy or in restraint of trade and hence would not be indictable either under the common law or under the Sherman Act, while combinations which do not come within this exception are illegal because in restraint of trade and against public policy.

Standard Oil Co. v. U. S., 221 U. S. 1 at 60-65.

The Colorado Legislature has merely attempted through this proviso to incorporate into the State Anti-Trust Law the standard laid down by the common law and the standard established by the United States Supreme Court to guide prosecutions under the Sherman Act. The Colorado Supreme Court has so interpreted this law.

Campbell v. People, 72 Colo. 213-216.

It is settled that an anti-trust law dependent upon such rule of reason can be the basis of a criminal prosecution.

Nash v. United States, 229 U. S. 373.
Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 109.

In the Nash case *Supra*, this court considered the question as to whether or not there was any constitutional difficulty in the way of enforcing the criminal prosecutions of the Sherman Anti-Trust Act because of the alleged uncertainty of such provisions. In holding that there was no constitutional objection to the enforcement of the criminal provisions of this Act, the court said, page 376:

> "That thereupon it is said that the crime thus defined by statute contains in its definition an element of degree as to which estimates may differ with the result that a man might find himself in prison because his honest judgment did not anticipate that of a jury of less competent men * * *
>
> "But apart from the common law as to restraint of trade thus taken up by the statute, the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or short imprisonment, as here; he may incur the penalty of death."

a. CASES DISTINGUISHED

The case of the U. S. v. Cohen Grocery Co., 255 U. S. 81 wherein a section of the Food Control or Lever Act, 40 Stat. 276, was held unconstitutional because it failed to fix an ascertainable standard of guilt is not in point because

of the differences between the statute there considered and the anti-trust act. Indeed, the court itself in the opinion handed down in the Cohen Grocery Company case distinguished that case from the Nash case, the court saying:

> "But decided cases are referred to which it is insisted sustain the contrary view. Waters-Pierce Oil Co. v. Texas, 212 U. S. 86; Nash v. United States, 229 U. S. 373; Fox v. Washington, 236 U. S. 273; Miller v. Strahl, 239 U. S. 426; Omaechevarria v. Idaho, 246 U. S. 343. We need not stop to review them, however, first, because their inappositeness is necessarily demonstrated when it is observed that if the contention as to their effect were true it would result, in view of the text of the statute, that no standard whatever was required, no information as to the nature and cause of the accusation was essential, and that it was competent to delegate legislative power, in the very teeth of the settled significance of the Fifth and Sixth Amendments and of other plainly applicable provisions of the Constitution; and second, because the cases relied upon all rested upon the conclusion that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded. Indeed, the distinction between the cases relied upon and those establishing the general principle to which we have referred, and which we now apply and uphold as a matter of reason and authority, is so clearly pointed out in decided cases that we deem it only necessary to cite them."

Likewise, the case of the International Harvester Company vs. Kentucky, 234 U. S. 216 is distinguishable. In that case the court recognizes and comments upon the distinction between the facts with which it was there concerned and

the facts in the Nash case, and on page 223 stated:

> "We regard this decision as consistent with Nash v. United States, 229 U. S. 373, 377, in which it was held that a criminal law is not unconstitutional merely because it throws upon men the risk of rightly estimating a matter of degree—what is an undue restraint of trade. That deals with the actual, not with an imaginary condition other than the facts. It goes no further than to recognize that, as with negligence, between the two extremes of the obviously illegal and the plainly lawful there is a gradual approach and that the complexity of life makes it impossible to draw a line in advance without an artificial simplification that would be unjust."

CONCLUSION

Summarizing—we contend that:

First. The court below should not have interfered by injunction with the prosecution of a criminal case in the State Courts of Colorado which criminal case was pending at the time of the filing of the complaint herein, because such interference by injunction with the criminal proceedings of the State Court is contrary both to the Federal Statutes and to the rules of equity.

Second. The exemption of the Colorado Anti-Trust Act in favor of labor is constitutional under the decisions of this court.

Third. The exemption from the operation of the anti-trust act in favor of agricultural products is reasonable and should be upheld.

Fourth. The decision of Connolly vs. Union Sewer Pipe Company is not controlling in this case.

Fifth. The Colorado Anti-Trust Law does not violate the due process clause of the Fourteenth Amendment by providing for the forfeiture of the corporate rights of those corporations which violate it.

Sixth. The Colorado Anti-Trust Law does, in fact, establish an ascertainable standard of guilt.

We, therefore, respectfully submit that the judgment of the lower court should be reversed with appropriate directions.

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APPENDIX A

THE COLORADO ANTI-TRUST LAW (SESSION LAWS 1913 CHAPTER 161, PAGE 613—SECTIONS 4036 TO 4043, INCLUSIVE, COMPILED LAWS, 1921)

AN ACT

DEFINING AND PROHIBITING TRUSTS; PROVIDING PROCEDURE TO ENFORCE THE PROVISIONS OF THIS ACT, AND PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ACT.

Be It Enacted by The General Assembly of the State of Colorado.

Section 1. A trust is a combination of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, or by any two or more of them, for either, any or all of the following purposes:

First. To create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

Second. To increase or reduce the price of merchandise, produce or commodities.

Third. To prevent competition in the manufacturing, making, transportation, sale or purchase of merchandise, produce, ores, or commodities, or to prevent competition in aids of commerce.

Fourth. To fix any standard of figures, whereby the price to the public of any article or commodity of merchandise, produce or commerce intended for sale,

use or consumption in this State shall, in any manner, be controlled or established.

Fifth. To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure; or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others so as to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or by which they shall agree to so pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected.

And all such combinations are hereby declared to be against public policy, unlawful and void; provided that no agreement or association shall be deemed to be unlawful or within the provisions of this act, the object and purposes of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed; provided further that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations engaged in the business of selling or manufacturing commodities of a similar or like character to employ, form, organize or own any interest in any association, firm or corporation having as its ob-

ject or purpose the transportation, marketing or delivering of such commodities; and provided further that labor, whether skilled or unskilled, is not a commodity within the meaning of this act.

Section 2. It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

Section 3. For a violation of any of the provisions of this act by any corporation, or by any of its officers or agents mentioned herein, it shall be the duty of the attorney general of this State, or district attorney of any district in which said violation may occur, or either of them upon his own motion to institute an action in any court of this State having jurisdiction thereof for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its existence.

Section 4. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises, or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings by injunction or otherwise.

Section 5. Each and every person, company or corporation, the officers, agents or representatives thereof, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not more than one thousand dollars, or to imprisonment for not more than six months; and it shall be the duty of the Attorney

General of the State, or the district attorney of any district in the State, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act.

Section 6. Any contract or agreement in violation of any of the provisions of this act shall be absolutely void; and when any civil action shall be commenced in any court of this State it shall be lawful to plead in defense thereof that the cause of action sued upon grew out of a contract or agreement in violation of the provisions of this act.

Section 7. That any person, firm, company or corporation that may be damaged by any such agreement, trust or combination described in Section 1 of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person, company or corporation operating such trust or combination, such damages as may have been thereby sustained.

Section 8. In any proceedings pending in any court of record brought or prosecuted by the Attorney General, or any district attorney, for the violation of any of the provisions of this act, no person shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or any other document, in obedience to the subpoena or under the order of such court, or any commissioner or referee appointed by said court to take testimony, or any notary public, or other person or officer authorized by the laws of this State to take depositions, when the orders made by such courts, or judge thereof, included a witness whose deposition is being taken before such notary public or other officer, on the ground or for the reason that the testimony or evidence required of him may tend to

criminate him or subject him to any penalty; but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person or officer.

Approved April 7th, 1913, at 9:03 A. M. o'clock.

APPENDIX B

THE COLORADO CO-OPERATIVE MARKETING LAW.

(Colorado Session Laws, 1923, Chapter 142, Page 420)

Section 1. (a) In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation; and to eliminate speculation and waste; and to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of agricultural products and to provide for the organization and incorporation of co-operative marketing associations for the marketing of such products, this Act is passed.

Section 2. As used in this Act.

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any farm products.

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" means any corporation organized under this Act; and

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed "non-profit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

(e) For the purposes of brevity and convenience this Act may be indexed, to and cited as "The Co-operative Marketing Act."

Section 3. Eleven (11) or more persons, a majority of whom are residents of this State, engaged in the production of agricultural products, may form a non-profit, co-operative association, with or without capital stock, under the provisions of this Act.

Section 4. An association may be organized to engage in the marketing or selling or in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning; packing, grading, storing, handling, shipping or utilization thereof or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein.

Section 5. Every group of persons contemplating the organization of an association under this Act is urged to communicate with the director of markets when said office shall have been established, who will inform them whatever a survey of the marketing conditions affecting the commodities proposed to be handled may indicate regarding probable success.

It is here recognized that agriculture is characterized by individual production in contrast to the group or factory

system that characterizes other forms of industrial production; and that the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing and that the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries; and that the public interest urgently needs to prevent the migration from the farm to the city in order to keep up farm production and to preserve the agricultural supply of the nation; and that the public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing in the substitution of merchandising for the blind, unscientific and speculative selling of crops; and that for this purpose, the farmers should secure special guidance and instructive data from the Governor.

Section 6. Each association incorporated under this Act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any agricultural products produced or delivered to it by its members, or the manufacturing or marketing of the by-products thereof; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. Any association in its option may limit itself in its articles of incorporation to the handling of products of its members only, or it may in its articles assume the right to handle the products of non-members, but, in such event, the association shall not handle for non-members a volume of products greater in the aggregate than the aggre-

gate of products handled by it for its own members.

(b) To borrow money without limitation as to amount of corporate indebtedness or liability; and to make advance payments and advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire; and to hold, own, and exercise all rights of ownership in; and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto.

(g) To establish, secure, own and develop patents, trade marks and copy rights.

(h) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated; or conductive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in

which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere.

Section 7. (a) Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members, (or issue common stock to), only persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or any part of the crop raised on the leased premises.

(b) If a member of an association be other than a natural person, such members may be represented by any individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

Section 8. Each association formed under this Act must prepare and file articles of incorporation, setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must be not less than five (5) and may be any number in excess thereof; the term of office of such directors; and the names and ad

dresses of those who are to serve as incorporating directors for the first term, and or until the election and qualification of their successors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision or paragraph of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof.

The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all

the courts of this State and other places as prima facie evidence of the facts contained therein and of the due incorporation of such associations. A certified copy of the articles of incorporation shall also be filed with the Director of Markets, etc.

Section 9. Amendments to articles of incorporation.

Section 10. By-laws.

Section 11. General and Special meetings.

Section 12. Directions—Election.

Section 13. Election of Officers.

Section 14. Officers, employees and agents to be bonded.

Section 15. When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment on stock and membership fees. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote.

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of a co-operative association shall own more than one-twentieth (1-20) of the common stock of the

association; and an association in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth (1-20) of the common stock.

No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him, and cumulative voting shall not be allowed.

Any association organized with stock under this Act may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or non-member, and may be redeemable or retireable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association; and such restrictions must be printed upon every certificate of stock subject thereto.

The association may, at any time, as specified in the by-laws, except when the debts of the association exceed fifty (50) per cent of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one (1) year thereafter.

Section 16. Removal of officer or director.

Section 17. Referendum.

Section 18. The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or speci-

fied commodities exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery; or at any other specified time if expressly and definitely agreed in the said contract. The contract may provide, among other things, that the association may sell or resell the products delivered by its members, with or without taking title thereto; and pay over to its members the re-sale price, after deducting all necessary selling, overhead and other costs and expenses, including interest or dividends on stock, not exceeding eight (8) per cent per annum, and reserves for retiring the stock, if any; and other proper reserves.

Section 19. (a) The by-laws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the members or stockholders to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(b) In the event of any breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree a specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened

breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(c) If any action upon such marketing agreement, it shall be conclusively presumed that a land owner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, where tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the land owner or landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for non-delivery or breach shall lie and enforceable against such landowner, landlord or lessor.

Section 20. Purchasing business of other associations, persons, firms or corporations.

Section 21. Annual reports.

Section 22. Any provisions of law which are in conflict with this Act shall be construed as not applying to the associations herein provided for.

Any exemptions whatsoever under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer, shall apply similarly and completely to such products delivered by its members, in the possession or under the control of the association.

Section 23. No person, firm, corporation or association, hereafter organized or hereafter applying to do business in this State as a co-operative marketing association for the sale of agricultural products, shall be entitled to use the work "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this Act.

Section 24. Interest in other corporations or associations.

Section 25. Contracts and agreements with other associations.

Section 26. Rights and remedies apply to similar associations of other states.

Section 27. Associations heretofore organized may adopt the provisions of this act.

Section 28. Any person or persons or any corporation whose officers or employes knowingly induce or attempt to induce any member or stockholder of an association organized hereunder or organized under similar statutes of other States with similar restrictions and rights and operating in this State under due authority, to break his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management or activity thereof, shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred ($100.00) dollars and not more than one thousand ($1,000.00) dollars for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred ($500) dollars for each such offense.

Section 29. No association organized hereunder and complying with the terms hereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or to fix prices arbitrarily nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this Act be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

Section 30. If any section of this Act shall be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby.

Section 31. The provisions of the general corporation laws of this State and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this Act.

Approved March 30, 1923.

Respectfully submitted,

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